IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

WRIT PETITION NO.1850 OF 2004

Dr. (Smt) Girija Rajaram ..Petitioner.

Vs.

Union of India & Ors. ..Respondents.

....

Mr. Rahul Walia for the petitioner.
Mr. H.V. Mehta for the respondents.

....

CORAM : DALVEER BHANDARI, C.J.&
DR.D.Y.CHANDRACHUD, J,

10th August, 2004.

ORAL JUDGMENT : (**Per Dr. D.Y.Chandrachud, J.**)

I

1. The Petitioner is a Senior Scientist with a distinguished record spanning four decades of experience in the Space and Earth Sciences. Her claim is simple enough: pension for about 19 years of service rendered by the Petitioner, between May 1977 and September 1985 as Reader; 15th March, 1990 to 15th March, 1992 as Visiting Scientist and 1st April, 1992 to 28th February, 2001 as Associate Professor and Professor. The Petitioner claims an

addition of five years to her qualifying service under Rule 30 of the Central Civil Services (Pension) Rules. The Respondents have denied to the Petitioner the benefit of service rendered from 1977 to 1985 and from 1990 to 1992. The Petitioner was informed that her service between 1992 and 2001 is 8 years and 11 months, which dis-entitles her to the benefit of pension on the ground that she does not have 10 years of qualifying service.

II

2. The Petitioner completed her B.Sc., in the first class in 1957, an M.Sc., again in the first class, in 1962 from Delhi University and a Ph.D., in Space Physics in 1972 from the Physical Research Laboratory, Ahmedabad. The Petitioner pursued a course of Doctoral Research at the University of Tokyo in Japan during 1973-74. In May 1977, the Petitioner was employed by the Indian Institute of Geomagnetism (IIG) as a Reader at the age of 36. The Petitioner worked in the areas of Geomagnetism and Plasmasphere and was a nominated member of the Indian National Science Academy and of the International Union for

Geomagnetism and Geodesy. She had inter alia guided M. Sc. And Ph. D. students in the course of their research in 1983.

3. The Director of IIG received a letter dated 9th August, 1983 from a professor at the University of Alberta in Edmonton, Canada inviting the Petitioner to study and pursue research with the Space Science Group on Geomagnetism initially for a period of one year. The letter was handed over to the Petitioner by the Director on 7th September, 1983. The Petitioner applied for extra-ordinary study leave without pay on 7th September, 1983 under Rule 14 of the rules and regulations governing IIG which provides as follows :

> "14. EXTRA ORDINARY STUDY LEAVE
>
> When a member of the staff applies for leave to prosecute further study or to take up a scientific assignment, in an institution abroad, and it is considered that such study or assignment will serve the interests of the Institute, although not to the extent of granting him special study leave, he may be

granted extraordinary study leave without pay for a period of a year at a time, subject to the total period of leave not exceeding five years. The leave so availed of may be allowed to count for increments at the discretion of the Director, or any authority to whom the power has been delegated by Director, provided that the member has put in at least three year's service in the Institute at the time of proceeding on such leave."

4. Since the Petitioner was expected by the University of Alberta to join on 1st January, 1984 she requested the Director by her application dated 7th September, 1983 to grant to her leave without pay with effect from 1st January 1984 for a period of one year. In the past, in December 1979 the Petitioner had been invited for a Symposium by an Australian University; in August 1980 for a Symposium in Puerto Rico and in 1982 for a research study by the French Space Science Group in Paris for three months. However, due to the inaction of the Director, the Petitioner had to forgo those offers. On 23rd November, 1983, the Chairman of the Governing Council addressed a letter to the Petitioner's

husband who was also a Geophysicist stating that he saw no difficulty in the Petitioner being released from I. I. G. to accept the fellowship which had been offered to her. There was, however, no reply to the application submitted by the Petitioner to the Director. The Petitioner's teachers including Prof. K. R. Ramnathan (then Professor Emeritus at the Physical Research Laboratory, Ahmedabad), and Dr. A. P. Mitra (Director of the National Physical Laboratory, New Delhi) requested the Director of I. I. G. to grant permission to the Petitioner so that she could be involved in the research project in Canada for which she was invited. All this received no response. The Petitioner delayed her departure for Canada until 27th January, 1984 and finding that permission was not being processed, addressed a letter to the Chairman of the Governing Council with a fervent plea that one month had already elapsed since the date on which she was supposed to join the university in Canada and recording that she was proceeding to Canada for research with effect from 1st February, 1984. The Petitioner, however, pleaded with the Chairman and requested him to ensure that justice was done to her by sanctioning extra-ordinary

study leave without pay.

5. On 14th June, 1984, the Petitioner received a memorandum from the Chairman of the Governing Council calling upon her to show cause as to why disciplinary action should not be taken against her for leaving the country without taking leave of absence and without handing over charge of the post that had been held by her. In reply the Petitioner in a letter dated 23rd July, 1984 placed the circumstances in which she had been constrained to do so on the record. On 6th August, 1984, the Chairman informed the Petitioner that her letter would be placed before the Governing Council. In February 1985, the Petitioner received an undated letter from the Director of I. I. G. advising her to unconditionally resign upon which the Council would withdraw the proceeding against her. This was followed by a telegram dated 15th March, 1985 warning her of punitive action in the absence of a clarification. On 26th March, 1985 Prof. Gordon Rostoker of the University of Alberta furnished a certificate outlining the nature of the research work that had been carried out by the Petitioner. On

the basis thereof the Petitioner by a letter dated 26th March, 1985 once again sought the grant of a further period of one year as extra-ordinary study leave without pay under the Rules. On 22nd July, 1985, the Director of the Institute communicated to the Petitioner the decision of the Governing Council that the Petitioner should leave her study and research work and report by 15th September, 1985, failing which disciplinary action would be pursued against her. The Petitioner in her reply dated 26th August, 1985 stated that it would be awkward for her to leave her research work midway and sought a consideration of her earlier request for the grant of leave without pay. If this was not possible, the Petitioner stated that she offered to resign. On 30th October, 1985 the Director conveyed the acceptance of the Petitioner's resignation by the Governing Council.

6. On 27th January, 1986 the Petitioner wrote to the Chairman of the Governing Council recording that upon the completion of her research she was returning back to India in May 1986 and seeking an association with the Institute. The Petitioner thereupon returned

in June 1986 and on 14th August, 1986 approached the Institute with a request for work. The Chairman of the Governing Council informed the Petitioner on 17th January 1989 that the case of the Petitioner would be supported if it came up before the Governing Council. The Director, however, informed the Petitioner on 28th March, 1989 that a favourable decision had not been taken by the Council. Subsequently, on 24th April, 1989 the Petitioner was informed by the Chairman of the Governing Council that in its last meeting in March 1989 the Council had requested the Director to process the application of the Petitioner through normal procedures, since the Council could not make an appointment directly unless there was a duly advertised post and a regular selection procedure. The then Director Dr. R. G. Rastogi retired from the Institute, upon which on 7th February, 1990 the Petitioner received a letter requesting her to apply as a Visiting Professor in the Institute. Subsequent on 7th March, 1990 the Petitioner was invited to join the Institute as a Visiting Scientist on a consolidated salary of Rs.5,100/- per month.

7. The Petitioner joined the Institute on 15th March, 1990 as a Visiting Scientist where she worked until 1st April, 1992. The period from 16th March, 1990 to 31st March, 1992 has been treated as a break in service though, according to the Petitioner during this period she had specifically been assigned by I. I. G. to visit Goa for receiving scientists who had gone on a scientific expedition to Antarctica. In March 1992 the Petitioner was appointed as Associate Professor which post she joined on 2nd April, 1992. The Petitioner was subsequently promoted as Professor in July 1997 and attained the age of superannuation on 28th February, 2001.

8. By her letter dated 23rd March, 2000 the Petitioner submitted a representation to the Chairman of the Governing Council seeking a condonation of her "forced absence" so as to enable her to receive the benefit of pension. The representation was rejected on 23rd February, 2000 holding that her past service could not count for superannuation benefits in view of her resignation in 1985. The Petitioner once again submitted a representation to the Chairman of the Governing Council on 15th

February, 2001. She was informed on 27th April, 2001 that her appeal had been rejected. Another representation dated 16th May, 2001 has been rejected. Aggrieved by the refusal of pensionary benefits, the Petitioner has approached this Court in proceedings under Article 226 of the Constitution.

III

9. The conspectus of facts narrated in the earlier part of this judgment would demonstrate that the Petitioner was appointed initially as a Reader on 15th May, 1977, a position from which the resignation submitted by the Petitioner on 26th August, 1985 was accepted by the Governing Council on 30th October, 1985. The Petitioner had been invited in September 1983 by the University of Alberta to pursue a research project relatable not merely to the field of specialization of the Petitioner, but directly connected to the work and function of the Institute of Geomagnetism. The invitation was received by the Director and though the Petitioner immediately applied for extraordinary leave without pay, she received no response. Rule 14 of the Rules governing the Institute

did specifically contemplate the grant of extraordinary study leave in such cases. Undoubtedly, the grant of such leave was in the discretion of the Director, but in the present case the Director chose to remain silent. Indeed the contention of the Petitioner is that on three previous occasions when she had been invited for attending symposia abroad, a similar lack of response had resulted in the Petitioner being deprived of a valuable professional opportunity. The Petitioner left for Canada, after a recording letter dated 27th January, 1984 which spoke of the circumstances in which she was required to leave. In June 1984 the Petitioner received a notice to show cause for disciplinary action. In response thereto she responded on 23rd July, 1984. In February, 1985, the Petitioner was informed by the Director that unless she agreed to unconditionally resign, punitive action was liable to be taken against her. The petitioner once again reiterated her request for study leave without pay on 26th March, 1985. In July 1985 the Petitioner was asked to return to India by September, failing which disciplinary action would be taken against her. The letter dated 26th August, 1985 of the Petitioner is not an unconditional letter

because the Petitioner specifically stated therein the circumstances in which she had been constrained to take up the assignment at the end of January 1984 without the permission of the Director. The Petitioner, however, stated that if her explanation was not accepted, she would offer to resign. It was this letter which was accepted on 30th October, 1985.

10. After the Petitioner returned to India in June 1986 she initially worked with the Tata Institute of Fundamental Research from 1987 to 1990 as a CSIR Pool Officer and Visiting Scientist. Eventually on 16th March, 1990 the Petitioner joined the Institute as a Visiting Scientist. The appointment was initially for a period of one year and it was thereafter extended for a further period of one year. Thereafter it is common ground that from 2nd April, 1992 the Petitioner was regularly absorbed as Associate Professor and was promoted as a Professor from 1st July, 1987 which position she held until her superannuation on 28th February, 2001.

IV

11. At this stage, the question which arises before the Court is as to whether the Petitioner should be deprived of the benefit of the service which was rendered from 1977 to 1985 in counting her years of qualifying service for pension on the ground that she had resigned and, which resignation was accepted on 30th October, 1985. The ground on which the Petitioner is sought to be deprived of the benefit of her past service between 1977 to 1985 is that she had resigned. This, in our view, is clearly arbitrary and unsustainable. Dr. Prabha Atri v. State of U.P. (2003 SCC (L&S) 118) was a case where the appellant had worked as an Anesthetist in a Government Hospital in Allahabad and she was issued a memo in January 1999 attributing certain acts of omission amounting to negligence Thereupon she was suspended. The petitioner thereupon submitted an explanation recording that if it was not found to be acceptable, she would have no option left but to tender her resignation with immediate effect. The resignation was purportedly accepted and the domestic enquiry was stopped. The Petitioner complained that she had only expressed an intention to resign and approached the High Court. The High Court

dismissed her plea. The Supreme Court in appeal held that the letter in question could not be construed to convey a spontaneous intention to give up or relinquish her office accompanied by any act of relinquishment. The Court held that to constitute a resignation, it must be unconditional and with an intention to operate as such. At best, the Court held, the letter amounted to a threatened offer on account of the frustration of an officer who believed that she was being harassed. The principles which have been enunciated by the Supreme Court must apply to the present case. The Petitioner was repeatedly pleading with the authorities to grant to her the benefit of extraordinary leave without pay as permissible under the Rules. Her application was not considered before the date on which she was required to take up research studies abroad. Thereafter a threat of punitive disciplinary action was held out to her and the Petitioner was informed that the action could be withdrawn if she resigned from service. Even as she wrote to the authorities on 26th August, 1985, the first and foremost plea by the Petitioner was for a reconsideration of her plea and she stated that if that was not possible then she would offer to resign. Even while

concluding the letter, the Petitioner sought a sympathetic consideration of her request for the grant of leave without pay. The authorities, however, unilaterally and arbitrarily informed the Petitioner that her resignation was accepted. The plea for reconsideration of the request for extraordinary leave without pay was not dealt with in the reply. The principles which have been enunciated by the Supreme Court in Prabha Atri' scase (supra) must equally apply to the facts of the present case. There was no relinquishment of her post by the Petitioner and no unconditional expression of an intention to leave her post. We are, therefore, of the view that the authorities were clearly not justified in declining to the Petitioner the benefit of her service between 1977 and 1985 in computing the qualifying service for the purpose of pension. We, however, clarify that the only purpose for which the benefit of the principle laid down in Atri's case is claimed in the present case is in relation to treating the period between 1977 and 1985 for pensionary benefits. We hold that the Respondents erred in depriving the Petitioner of the benefit of that period on the ground that she had resigned from service.

12. After the Petitioner returned from Canada, she initially worked from 1987 to 1990 at the TIFR and joined the Institute on 15th March, 1990 as a Visiting Scientist. She occupied that position until 15th March, 1992 and with effect from 1st April, 1992 she was absorbed as Associate Professor. In the affidavit in reply which has been filed on behalf of the Third Respondent, it has been submitted that the Petitioner is not entitled to the benefit of service rendered from 15th March, 1990 until 15th March, 1992. The Third Respondent has submitted that Rule 17 of the C. C. S. (Pension) Rules provides for counting of service on contract. The Rule stipulates that a person initially engaged on a contract for a specified period and appointed to the same or another post, in a permanent capacity in pensionable establishment has the option to forgo Government's contribution to Contributory Provident Fund including any other compensation for that service. In such a case, the period of initial contract services will qualify. According to the Respondents since the appointment as a Visiting Scientist was on a consolidated remuneration of Rs.5,100/- per month without

contribution to the C. P. F., the Council decided that the assignment of the Petitioner cannot be construed as a contract to become eligible for pensionary benefits "since the assignment given to her did not contain any terms of contract" (emphasis supplied). The next submission is that the appointment as an Associate Professor from 2nd April 1992 was on a regular basis and was a fresh appointment which was not linked to the earlier appointments. We are of the view that these are patently specious and untenable reasons for denying to the Petitioner the benefit of service rendered from 1990 to 1992 for computing her pensionable services. Plainly the Petitioner is entitled to the benefit of the aforesaid services. Over and above the aforesaid, the Petitioner has claimed the benefit of an addition of five years to her qualifying service under Rule 30 of the C. C. S. (Pension) Rules. Rule 30 provides for an addition to qualifying service for superannuation pension of the actual period not exceeding 1/4th of the length of service or the actual period by which the age at the time of recruitment exceeded twenty-five years or a period of five years whichever is less if the service or post to which the

Government servant is appointed is (a) for which postgraduate research, or specialist qualification or experience in scientific, technological or professional fields, is essential and (b) to which candidates of more than twenty five years of age are normally recruited. The Petitioner meets these conditions. The claim of the Petitioner to the benefit of Rule 30 has not been seriously resisted. In ground (o) to the petition it has been stated that Petitioner was 36 years of age when she was appointed as a reader and a similar benefit has been extended to other scientists in the institute including one Dr. B. P. Singh. This averment has not been denied. In the circumstances, we find that there is merit in the contention of the petitioner. We are constrained to observe that the denial of pensionary benefits to the Petitioner is on an entirely specious basis and is untenable.

13. The Petition is accordingly disposed of by directing the Respondents to count the service of the Petitioner (i) from 15th May, 1977 to 30th October, 1985 as Reader; (ii) from 15th March, 1990 to 15th March, 1992 as Visiting Scientist and (iii) from 1st

April, 1992 to 28th February, 2001 as Associate Professor/Professor for the grant of pensionary benefits. The Petitioner shall also be entitled to the benefit of Rule 30 of the C. C. S. (Pension) Rules towards qualifying service. The break-in-service between 1985 to 1990 shall stand condoned in terms of prayer clause (c) of the Petition and shall be treated as *dies non*. The pensionary benefits due to the Petitioner inclusive of arrears shall be paid within a period of eight weeks. The Petition is allowed in these terms.

In the circumstances of the case, there shall be no order as to costs.

CHIEF JUSTICE

DR.D.Y.CHANDRACHUD, J.